

**MARVIN G. BATES**  
Claimant

**DANIEL MILLER TRUCKING**  
Respondent

**ITT HARTFORD**  
Insurance Carrier

Claimant has testified that he began having trouble with his breathing on March 20, 1995 while delivering a load of powder fertilizer in Carlsbad, New Mexico. He further

testified that over the next few days his respiratory condition deteriorated. Claimant testified that on March 22, 1995 he was involved in an accident in LaCygne, Kansas, where he slipped while exiting his cab, landing on his back.

Claimant lost consciousness at the time of the fall and did not regain consciousness for four (4) or five (5) days. When he regained consciousness he was on a ventilator and was being fed intravenously at the Olathe Medical Center. At the time of the preliminary hearing on August 24, 1995, he had incurred an excess of thirty-one thousand dollars (\$31,000.00) in medical expenses. Dr. James Ruhlen indicates in his records claimant is totally disabled from the occupation of a truck driver and further opines that given claimant's long history of noncompliance and the refractory nature of his severe medical problems he expects claimant's disability to be permanent.

The Appeals Board finds, at this point in the proceeding, that claimant has failed to meet the burden of establishing that his current injury is work related. Dr. Ruhlen states that it is his impression that claimant suffers from the following: (1) acute and chronic respiratory failure, (2) severe polycythemia, probably due to chronic hypoxemia, (3) history of sleep apnea syndrome (4) probable cor-pulmonale, (5) chronic venous insufficiency of the legs with stasis dermatitis and prior history of cellulitis of the legs in 1993 and again in 1994, (6) probable acute bronchitis and/or bronchopneumonia, (7) hyperglycemia with prior history of hyperglycemia, presumably is diabetic.

Claimant has testified that he began suffering respiratory problems in March while transporting fertilizer. The record contains no medical opinion that ties any of the above conditions to claimant's work. Finally, the medical records introduced do include a history of hospitalization for hypertension, sleep apnea, chronic obstructive pulmonary disease and cellulitis of the legs a year before the alleged date of accident in this case. Under the circumstances, the Appeals Board finds that claimant's testimony that he began suffering respiratory problems on the job does not meet his burden of establishing accidental injury arising out of and in the course of his employment.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Special Administrative Law Judge Leroy C. Rose dated September 13, 1995, should be, and the same is hereby, reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1995.

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BOARD MEMBER

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BOARD MEMBER

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**BOARD MEMBER**

- c: David H. Farris, Wichita, Kansas  
P. Kelly Donley/Richard J. Liby, Wichita, Kansas  
Leroy C. Rose, Special Administrative Law Judge  
Philip S. Harness, Director